

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KENNETH C. SWANN and REBECCA  
SWANN,

Plaintiffs,

v.

DIAMOND STATE PORT CORPORATION,

Defendant.

C.A. No. 07-350-\*\*\*

**STIPULATION FOR ENTRY OF CONSENT JUDGMENT**

WHEREAS on June 6, 2007, plaintiffs/counterclaim defendants Kenneth C. Swann and Rebecca Swann (collectively "Plaintiffs") filed this action, asserting claims under 29 U.S.C. § 1161 *et seq.*;

WHEREAS on August 6, 2007, defendant/counterclaim plaintiff Diamond State Port Corporation ("Defendant") filed its answer to Plaintiffs' complaint, denying the allegations therein, and also filed a counterclaim, seeking to recover pay and benefits Defendant provided to Plaintiff Kenneth Swann within the 3-year period preceding the date of the counter-claim;

WHEREAS on August 16, 2007, without admitting liability, Defendant served Plaintiffs with an offer of judgment, in which Defendant offered to allow a judgment to be taken against it in the amount of \$4,500, together with costs (including attorneys fees) accrued to date (*see* Exhibit A hereto);

WHEREAS Defendant's offer of judgment provided that if Plaintiffs accepted the offer of judgment, Defendant would voluntarily dismiss its counterclaim without prejudice to its right to re-file it at a later date in a Delaware state court;

WHEREAS on September 7, 2007, Plaintiffs accepted Defendant's offer of judgment (*see* Exhibit B hereto);

WHEREAS based on Plaintiffs' acceptance of the offer of judgment, Defendant consents to the dismissal of its counterclaim without prejudice; and

WHEREAS the parties agree that reasonable costs and attorneys fees for Plaintiffs are \$3,000.

IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that the Consent Judgment attached hereto as Exhibit C may be entered by the Court.

ABER, GOLDLUST, BAKER & OVER

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ GARY W. ABER*

*/s/ JASON A. CINCILLA*

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Dated: September 11, 2007

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**[PROPOSED] CONSENT JUDGMENT**

The Court, pursuant to the stipulation of the parties, hereby ORDERS, ADJUDICATES, and DECREES that final judgment shall be and hereby is entered on the Complaint as follows:

A. Judgment is hereby entered in favor of Plaintiffs and against Defendant in the total amount of \$7,500, which amount includes costs and attorneys' fees;

B. Defendant's counter-claim is hereby dismissed *without* prejudice.

IT IS SO ORDERED, ADJUDICATED, AND DECREED.

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
United States District Judge